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APP 20 2005

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In re Application of Potter *et. al.*
Serial No.: 09/868,348
Filed: June 15, 2001
Attorney Docket No.: 5743.US

: PETITION DECISION

This is in response to the petition under 37 CFR 1.181, filed February 2, 2005, for withdrawal of abandonment of the above identified application, predicated on a failure to receive an Office Action.

A review of the file history shows that the examiner mailed an Office Action to the attorney of record on February 12, 2003. The Office received a response from Applicant's new attorneys, not of record, on August 14, 2003, which included a Petition for Extension of Time, accompanied by the required fees. The Applicant's new attorneys filed a Revocation and New Power of Attorney on January 8, 2004. However, because the August 14, 2003 claims received did not comply with 37 CFR 1.121, the Examiner mailed an Office Communication on April 20, 2004 to the Applicant, requesting that an amendment to the claims be filed with a one-month extendable time limit for response, from the date of the mailing, in compliance with 37 CFR 1.121. Unfortunately, the Office mailed the Communication to the Applicant's prior, deceased attorney, who was no longer of record. The Office received returned mailings, originally addressed to the Applicant's prior attorney, on May 3, 2004 and June 9, 2004. Without a recorded response to the April 20, 2004 Office Communication, the Office mailed a Notice of Abandonment to the Applicant's new attorney, on December 28, 2004.

In the petition filed under 37 CFR 1.181, Applicant's new attorney of record submitted, a copy of a "Substitute" Response to the Office Communication of April 20, 2004, a copy of the Filing of Revocation and New Power of Attorney, stamped by the OIPE on January 8, 2004, a copy of the Office communication of April 20, 2004 addressed to the former Attorney, and the firm's complete docket report for the time period from April 20, 2004 to May 20, 2004.

In view of the evidence presented, the Notice of Abandonment was in error and is withdrawn, thus the application is restored to pending status with the mailing of this decision.

The petition is therefore **GRANTED**.

The application will be forwarded to the examiner for further action.

Should there be any questions about this decision please contact Jean Vollano, by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0648, or by facsimile sent to the general Office facsimile number, 703-872-9306.



Bruce Kisliuk
Director, Technology Center 1600